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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPARTMENT OF TRANSPORTATION

Applications of)
)
) AMERICAN AIRLINES, INC.) 97 FEB 24 PM 3:08
) and) DOCKET SECTION
) AEROVIAS NACIONALES DE COLOMBIA, S.A.) Dockets OST-97-2081 -9
) and)
) OST-97-2083 -9
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) for exemptions under 49 U.S.C. §40109
)
)

Joint Applications of)
)
) AMERICAN AIRLINES, INC.)
) and) Undocketed
) AEROVIAS NACIONALES DE COLOMBIA, S.A.)
)
) for Statements of Authorization under 14
) CFR Parts 207 and 212 (Reciprocal Code-
) Sharing Services)
)
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CONSOLIDATED RESPONSE OF UNITED AIR LINES, INC.
AND MOTION FOR LEAVE TO FILE

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DATED: February 24, 1997

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DATED: February 24, 1997

CONSOLIDATED RESPONSE OF UNITED AIR LINES, INC.
AND MOTION FOR LEAVE TO FILE

United Air Lines, Inc. ("United") submits the following consolidated response to the replies of American Airlines, Inc. ("American") and Aerovias Nacionales de Colombia, S.A. ("AVIANCA") in the above-captioned proceedings:'

1. It should be obvious from the American and AVIANCA replies that these carriers are aware of the inconsistency of

¹ United requests leave to file this response to address the cases miscited by American and AVIANCA as precedents allegedly supporting their code share. As explained herein, none of these alleged precedents supports the code share proposed by American and AVIANCA. The Department should accept United's response to ensure an accurate record on these issues.

their proposed code share with DOT policy. None of the cases which they cite as supporting the approval of their code share even comes close to doing so.

Based on these pleadings, it is now apparent that American has entered into its code-share agreement with AVIANCA in a cynical attempt to prevent that carrier from forming a partnership with another U.S. carrier that would use code sharing to increase competition in the U.S.-Colombia market. American must know that its agreement with AVIANCA is doomed to denial, based on its inability to marshal any supporting cases in its reply.

The same problems underlie American's proposals to code share with other Caribbean/Latin America carriers, such as those in the TACA Group and ALM Antillean Airlines. Notwithstanding the evident inconsistency of these anticompetitive code shares with DOT policy and precedent, American is continuing to enter into them with the apparent hope of barring other U.S. carriers from forming alliances that might challenge American's dominance.² Moreover, American may also hope that, if it submits

² AVIANCA claims (p. 5, n.2) that the exclusivity provisions of its code-share agreement with American are no different from those in agreements United has signed with carriers such as Thai International and Air India. There is, however, a very real difference which AVIANCA overlooks. There are ample opportunities for other U.S. carrier code-share partnerships in the U.S.-India and U.S.-Thailand markets with numerous third-country carriers, and the agreements the U.S. has

enough of these partnerships to the Department for approval, one or two of them may succeed, if only to avoid the appearance of prejudice against American.

The Department should not allow itself to become a party to any of American's strategies. Rather, the Department should use the American/AVIANCA proposal as a vehicle to cut off American's efforts to enter into code shares aimed at increasing its dominance in the Caribbean/Latin America region in general, and at the Miami gateway in particular. There is no need to investigate the American/AVIANCA code share. In view of the dominance it would create in a market where there are no opportunities open to other carriers to compete, this proposed code share falls afoul of DOT policy and should be denied on the basis of the present record.

2. American has attempted to find parallels between its code share with AVIANCA and those in other restricted-entry markets which DOT has approved. Most notably, American cites the Continental/Alitalia, Delta/Varig and Delta/Virgin Atlantic code shares as examples of the Department's willingness to allow code-share partnerships where there is in place a bilateral agreement

with both India and Thailand guarantee the approval of such arrangements. AVIANCA makes no suggestion that its government would approve any code shares by a non-designated carrier such as United with either a Colombian carrier such as ACES or a third-country carrier even if, which is unlikely, such a carrier offered a competitive service pattern in the relatively short-haul U.S.-Colombia market.

restricting U.S. carrier entry. In each of these cases, however, the U.S. carrier partner was using a code share to gain competitive entry to a market (U.S.-Italy and U.S.-Brazil) or airport (London Heathrow) not otherwise available to it under the applicable bilateral agreement. That is not the case with the American/AVIANCA code share where American is already the dominant carrier in the U.S.-Colombia market.

American also cites the recent approvals of U.S.-Mexico code shares involving Delta and United as examples of approvals in a restricted-entry market. The Department has, however, already rejected these arguments when American raised them against approval of those U.S.-Mexico code shares. In doing so, the Department contrasted the U.S.-Mexico market to the U.S.-Central America markets where American is seeking to code share with the TACA Group of carriers:

... the U.S.-Mexico market is very competitive. No airlines or gateways have dominant positions in the market as is the case in Central America. Indeed, eleven U.S. carriers serve the market from numerous gateways and several U.S. carriers provide nonstop service from their hubs--American from Dallas/Ft. Worth, Miami and Chicago as well as Los Angeles; America West from Phoenix and Las Vegas; Continental from Houston and Newark; Delta from Atlanta and Los Angeles; Northwest from Detroit, Minneapolis, and Memphis; TWA from St. Louis; United from Washington, Chicago and San Francisco; and USAir from Baltimore. Furthermore, the city-pair markets at issue are competitive with nonstop service by at least four airlines... While American is correct that there are bilateral limitations on services in the U.S.-Mexico market, double designation is generally available in all

markets and, given the large number of carriers serving and number of gateways served, alternative nonstop or one-stop services are available for cities throughout the United States, resulting in a wide range of competitive services.

Order 97-1-15 at 4-5. U.S.-Colombia markets, by contrast, are dominated by American from its Miami hub and additional U.S. carrier entry is presently foreclosed in all city pairs. Competitive choices such as those available in U.S.-Mexico markets are not available between the U.S. and Colombia. The factors supporting approval of U.S. -Mexico code shares simply do not apply to U.S.-Colombia.

Finally, American cites United's code shares with Thai Airways International and with Saudi Arabian Airlines ("Saudia") as examples of approvals given in restricted-entry markets. In both the U.S.-Thailand and U.S.-Saudi Arabia bilateral agreements, however, there are provisions that specifically authorize these code shares. Moreover, there were under both agreements opportunities for additional U.S. carrier entry which were not affected by United's code shares.³ That is not the case

³ American also cites the United/Lufthansa code share as having been approved notwithstanding entry limits. As with Saudia and Thai International, that code share was only approved to the extent it was consistent with the U.S./Germany agreement. Approval was, in fact, deferred on some portions of the United/Lufthansa code share until that agreement was expanded to allow U.S.-carriers to compete, at the urging of carriers such as American. See Consolidated Answer of United, dated February 3, 1997, in this proceeding, at pp. 11-12.

in the U.S.-Colombia market where there is no bilateral agreement on code sharing and no opportunity for additional U.S. carrier entry.⁴

3. American also urges (pp. 7-8) that the Department should have no concern with the combined marketshare of American and AVIANCA, having approved code shares in other situations where similar marketshare dominance resulted. Again, American cites the United/Saudia code share as an example of this, noting that that alliance operated 100 percent of the nonstop seats between the U.S. and Saudi Arabia. However, prior to the code share United was not even serving Saudi Arabia. The code share in that case was used to add United as a competitive factor in the market. Moreover, there are numerous carriers offering onestop services between the U.S. and Saudi Arabia, including another U.S. carrier, and, as noted previously, the applicable U.S.-Saudi Arabia bilateral, unlike U.S.-Colombia, allows for additional U.S. carrier entry that is not affected by the code share.

⁴ American also cites Delta's code shares with Aer Lingus, TAP-Air Portugal and Austrian Airways as examples of approvals in limited entry markets. There are no agreed limits on U.S. carrier entry in the U.S. agreements with either Ireland or Portugal and at the time the Delta/Austrian code share was approved, there were unused U.S. carrier opportunities (including the right to code share) available under the U.S./Austria agreement.

4. American also urges that its dominance in the U.S.-Caribbean/Latin America region should not be cited as a factor against approval of its cooperation with another carrier in that region. In support of this proposition, American cites the Department's allocation of additional U.S.-Argentina frequencies to American over United's objections that this would increase American's regional dominance. In that case, the Department approved American's expansion under a bilateral agreement which, at the time, allocated more frequencies to United than to American. The additional frequencies, thus, allowed the U.S. to equalize U.S. carrier opportunities in the U.S.-Argentina market. Moreover, American was not seeking to use the additional frequencies to operate services in cooperation with another carrier. Here, by contrast, American already dominates the U.S.-Colombia market and is seeking to increase its dominance by cooperating with the largest foreign carrier in the market.

American also cites the Department's approval of United's code share with Thai International Airways as an example of a code share involving an allegedly dominant regional U.S. carrier with a foreign carrier in the same region. American's domination of the Caribbean/Latin America region bears no resemblance, however, to United's position in the Asia/Pacific region. The Miami gateway is the key to the Caribbean/Latin America region and American uses that gateway **as** a fortress hub

to prevent other carriers from competing. Thus, American operates 51 percent of the total seats at Miami and that gateway controls 49 percent of the total traffic between the U.S. and the Caribbean/Latin America region (excluding Mexico).⁵

No single U.S. gateway dominates the Asia/Pacific region as Miami does the Caribbean/Latin America. Traffic to Asia/Pacific countries is widely dispersed among U.S. West Coast and interior gateways as well as Hawaii. Tokyo is comparable to Miami as the key gateway to the Asia/Pacific region. And yet, United cannot be said to dominate Narita to anything near the extent that American dominates Miami. United's 11 percent of Narita departures compares to American's control of 51 percent of departures at Miami. See Docket OST-96-1939 (Exhibit UA-101).⁶

Indeed, the degree of regional domination that American enjoys in the Caribbean/Latin America area as a result of its

⁵ As noted previously, the U.S.-Mexico market is more competitive than other U.S. -Caribbean/Latin American markets. Although American is the largest U.S. carrier to Mexico, it cannot use Miami to control U.S.-Mexico traffic as it does traffic to other points in the region.

⁶ American's reference to United's code shares with Thai International and Air New Zealand also ignores the competitive opportunities available to other carriers under the U.S. aviation agreements with those carriers' homelands. In the case of New Zealand, American is already involved in a third-country carrier code share with QANTAS (which also includes British Airways) between the U.S. and New Zealand as well as Australia. Such opportunities for new or expanded U.S. carrier services are not available under the U.S.-Colombia agreement.

position at the Miami gateway is not duplicated in any other region with one possible exception. The exception would involve American's domination of the transatlantic markets were it to succeed in gaining the access it seeks at London Heathrow through its alliance with British Airways.

5. American also claims (pp. 10-11) that its code share will enable American to increase its service offerings to Colombia which it needs "in preparation for liberalization of the U.S.-Colombia bilateral relationship." There are two answers to this: (1) The only market that American cites as receiving new online service from American is Medellin, Colombia, where American would code share on AVIANCA; and (2) There is no prospect of any liberalization of the U.S.-Colombia relationship now or in the immediately foreseeable future. The last expansion took place only when a second Colombian-flag combination carrier (ACES) sought new entry to the U.S. Under the existing relationship, there is little likelihood of any further expansion, especially if the dominant Colombian carrier were to be allowed to cooperate with the dominant U.S. carrier as American and AVIANCA propose.

AVIANCA cites (p. 4) other alleged benefits, not mentioned by American, relating to American's code-share service beyond Colombian gateways to points in other South American countries and within Colombia. As United has already noted, the

beyond Colombia service to third countries merely duplicates more direct service American already offers to these points from Miami. The beyond gateway Colombian interior points involve very small markets. Moreover, none of these beyond gateway services can be provided so long as Colombia remains in Category 2 of the FAA's safety assessment program.⁷

6. In urging the Department to overlook its dominance of the Caribbean/Latin America region, American wholly ignores a series of DOT actions dating back over the last year that are aimed at reducing American's dominant role in that area. The Department awarded additional U.S.-Peru frequencies to Continental rather than American even though American proposed to use them at Dallas/Ft. Worth rather than Miami. The Department found that an "award to American would increase concentration in an already concentrated market, making future entry that much more difficult." U.S.-Peru Combination Service Proceeding, Order 95-12-26 at 5. Similarly, the Department subsequently chose Continental over American when it allocated additional U.S.-Peru frequencies. The Department again raised its concerns regarding

⁷ Contrary to AVIANCA's claim (pp. 6-7), the LOT/American code-share flights between a U.S. gateway and Poland while that country was in Category 2 are not an indication that AVIANCA would be able to operate a code share for American on flights beyond Colombia which do not serve the U.S. United understands that DOT will allow code sharing by a U.S. carrier on Category 2 foreign carriers only on existing services by such carriers that operate to or from U.S. points.


American's "dominance," noting that American carried 1.7 times as many passengers in the U.S.-Central/South America area as the next largest carrier in the region (Mexicana) and 4.7 times as many as the next largest U.S. carrier (Continental). U.S.-Lima Combination Service Proceeding (1996), Order 96-6-53 at 7. The Department also awarded Continental U.S. -Ecuador frequencies in favor of American to allow Continental to offer intergateway competition from Newark against American's "exclusive position at Miami." Orders 96-10-23 at 3 and 96-7-4.

More recently, the Department has deferred action on American's request to code share with the TACA Group of carriers between the U.S. and Central America pending completion of an investigation into the competitive consequences of that code share. American/TACA Group Reciprocal Code-Share Services Proceeding, Docket OST-96-1700, Order 96-9-15. When American demanded reconsideration of that decision and immediate approval of its code share, the Department refused, noting the "serious competitive issues" at stake in the investigation. These matters required investigation "primarily because of the position currently held by American and the TACA Group carriers in the U.S.-Central America market" which would involve "a combination of the major competitors" in that market. Order 96-11-12 at 6-7.

The same concern regarding American's dominance must be brought to bear in this case. And here there is a bilateral

agreement that severely restricts entry. There is no need to investigate the American/AVIANCA proposal. It is not even a close case under DOT policy and precedent. The proper course is simply to deny the applications on the basis of the instant record.

Respectfully submitted,



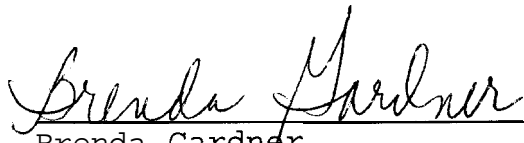
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DATED: February 24, 1997
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Consolidated Response of United Air Lines, Inc. and Motion For Leave To File on all persons named on the attached service list by causing a copy to be sent via first class mail, postage prepaid.


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